

Exhibit C

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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ERNEST DAVIS, et al.,

4 Plaintiffs,

5 v.

07 CV 9897 (CLB)

6 UNITED STATES JUSTICE
7 DEPARTMENT, et al.,

8 Defendants.

-----x

9 New York, N.Y.
10 December 28, 2007
4:45 p.m.

11 Before:

12 HON. P. KEVIN CASTEL,

13 District Judge

14 APPEARANCES

15 STEPHEN C. JACKSON, via telephone
16 Attorney for Plaintiffs

17 MICHAEL J. GARCIA
18 United States Attorney for the
19 Southern District of New York for Defendants Department of
Justice, FBI, and United States Attorney's Office for the
20 Southern District of New York
NEIL CORWIN
21 Assistant United States Attorney

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1 (In the robing room)

2 THE COURT: This is Judge Castel. I am present with a
3 court reporter and my law clerks and courtroom deputy. Also
4 present is counsel for one or more defendants, if you'll please
5 state your appearance.

6 MR. CORWIN: Your Honor, Neil Corwin, assistant United
7 States attorney for the Southern District of New York.

8 I just learned of this matter literally within the
9 past hour. At this point, my understanding is that my office
10 represents the Department of Justice, the Federal Bureau of
11 Investigation, and the United States Attorney's Office. I
12 gather that the complaint also names a number of John Doe FBI
13 agents, and my understanding at this point is we do not
14 represent those individuals in a personal capacity.

15 THE COURT: All right. Mr. Jackson, why don't you
16 state your appearance if you will.

17 MR. JACKSON: Yes. Stephen Jackson for all of the
18 plaintiffs in the matter, your Honor.

19 THE COURT: Mr. Jackson, tell me about notice to the
20 state defendants.

21 MR. JACKSON: Well, basically, your Honor, the notice
22 was in the form of telephone communications made to the offices
23 of the defendants indicating that we will be filing an order to
24 show cause in White Plains. I physically attempted to do that
25 this afternoon, anticipating that we would have an opportunity

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1 to argue the matter before the assigned judge with all of the
2 parties. But due to the holiday, people are not available and
3 unfortunately we were not able to coordinate those efforts
4 before Judge Briant. The matter was sent over to your Honor.

5 THE COURT: Let me inquire, Mr. Jackson, with regard
6 to the New York State Board of Elections, have they been served
7 in this action?

8 MR. JACKSON: I believe so, your Honor. I know that.

9 THE COURT: Have they entered an appearance in this
10 action?

11 MR. JACKSON: No one has entered an appearance yet. I
12 don't think anybody is in default at this stage. I have to
13 check to see what was indicated was the affidavit of service.

14 THE COURT: When did you serve them with the
15 underlying complaint?

16 MR. JACKSON: Okay. Hold on one second.

17 THE COURT: The action was filed on November 8 of this
18 year.

19 MR. JACKSON: The complaint was filed against some of
20 the defendants as early as the 27th of -- 28th of November.

21 THE COURT: All right. And what efforts did you
22 make -- who did you call at the New York State Board of
23 Elections, Mr. Jackson?

24 MR. JACKSON: I spoke to -- hold on a second. The New
25 York State Board of Elections had not interposed, I spoke to

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1 someone in the receptionist's office notifying them about this
2 matter, and notifying them about the proposed hearing on the
3 order to show cause.

4 THE COURT: What is the receptionist's office, if you
5 could help me with that. I am not familiar with the
6 receptionist's office.

7 MR. JACKSON: I notified the Board of Elections, the
8 general information number, and provided to them the name of
9 the case number of the matter, the caption of the matter, and
10 indicated that the matter was filed in the Southern District
11 court, and there was no assigned counsel as far as I knew at
12 the time.

13 MR. CORWIN: Your Honor --

14 THE COURT: Before, Mr. Corwin -- when was this phone
15 call made?

16 MR. JACKSON: The initial phone calls were made last
17 week.

18 THE COURT: You called them last week to tell them
19 that you were coming in on an order to show cause when?

20 MR. JACKSON: I indicated that we will be filing an
21 order to show cause on Friday.

22 THE COURT: When did you call? When last week did you
23 call them?

24 MR. JACKSON: I called them initially on -- hold on a
25 second.

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1 THE COURT: I'm talking now about the New York State
2 Board of Elections.

3 MR. JACKSON: Right. Hold on. They were initially
4 contacted on Monday.

5 THE COURT: So that wasn't last week.

6 MR. JACKSON: Right.

7 THE COURT: So you called them on what date? Give me
8 the date.

9 MR. JACKSON: I have to go through my notes, your
10 Honor. I'm actually, your Honor, the reason I'm fumbling a
11 little bit, I am in my car. I didn't quite make it back to the
12 office. I am trying to go through my file as I sit here now.

13 It looks like it was Friday, your Honor, the 21st.
14 Friday, December 21.

15 THE COURT: You told them what?

16 MR. JACKSON: That we will be filing an order to show
17 cause Friday, the proceeding Friday.

18 THE COURT: The preceding Friday you told them on the
19 21st --

20 MR. JACKSON: I told them I was filing an order to
21 show cause this Friday.

22 THE COURT: At what time and what place?

23 MR. JACKSON: In the White Plains courthouse.

24 THE COURT: That's what you told --

25 MR. JACKSON: That's what I told them.

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1 THE COURT: The New York State Board of Elections, you
2 don't know who you spoke to. Correct?

3 MR. JACKSON: No, I do not. The reason I do not know
4 who I spoke to, again, is because I made multiple phone calls
5 that day. There are multiple defendants, and we did make
6 multiple phone calls to the defendants --

7 THE COURT: Mr. Jackson, I haven't gotten to the other
8 defendants. I'm still on the New York State Board of
9 Elections.

10 MR. JACKSON: All right. Sorry.

11 THE COURT: Now tell me about the Westchester County
12 Board of Elections. When did you call them? Who did you call?

13 MR. JACKSON: The same thing, your Honor. We made a
14 phone call on the 21st of December to all of the defendants.
15 And we basically indicated that again we did not have
16 responsive papers to the case, so there was no attorney
17 assigned that we could directly contact.

18 THE COURT: Who did you speak to at the Westchester
19 County Board of Elections?

20 MR. JACKSON: The best I can do again, I spoke to the
21 receptionist who answered the phone. The operator would then
22 refer the matter to their office to see who would be the
23 assigned counsel and that person would get back to me. But no
24 one got back to me.

25 THE COURT: You personally had this conversation?

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1 MR. JACKSON: Excuse me?

2 THE COURT: You personally had this conversation?

3 MR. JACKSON: Yes, I did. I personally had a
4 conversation. I also directed a paralegal in my office to also
5 make phone calls with respect to the order to show cause.

6 THE COURT: What can you tell me about those phone
7 calls?

8 MR. JACKSON: Excuse me?

9 THE COURT: What can you tell me about the paralegal's
10 phone calls?

11 MR. JACKSON: As far as I know, the phone calls were
12 made --

13 THE COURT: What phone calls, to whom, when?

14 MR. JACKSON: Well, I can't speak directly in terms of
15 the specific time, but it would had to have been made on the
16 21st or shortly thereafter, either Friday or Monday. So it
17 would be no longer than the following Monday.

18 THE COURT: Let me ask you, were the state offices
19 open on Monday, December 24?

20 MR. JACKSON: I don't know, Judge.

21 THE COURT: You don't know the answer to that, but the
22 calls may have been made -- you're telling me that the calls
23 may have been made on December 24, but you do not know whether
24 the state offices were open on December 24.

25 MR. JACKSON: I know I just made the calls that I made

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1 were on the 21st, your Honor, on the preceding Friday.

2 THE COURT: Tell me about your call to Clinton Young.

3 MR. JACKSON: All right. Clinton Young was -- hold on
4 a second. We had -- we tried to get ahold of an attorney who
5 we knew initially contacted my office upon the filing of the
6 complaint.

7 THE COURT: Mr. Young was represented by counsel?

8 MR. JACKSON: Yeah, Mr. Young is represented by his
9 own attorney. Again, no one -- he didn't interpose an answer.

10 THE COURT: But you received a call from Mr. Young's
11 attorney identifying himself as such?

12 MR. JACKSON: Well, I received a call from someone who
13 identified himself as an attorney regarding the filing of the
14 complaint.

15 THE COURT: Did you contact that individual with
16 regard to your application for a temporary restraining order?

17 MR. JACKSON: No, your Honor. That individual was not
18 contacted.

19 THE COURT: Did you contact anybody on behalf of
20 Mr. Young with regard to your application?

21 MR. JACKSON: No, Judge.

22 THE COURT: All right. Now, Janet Snyder, did you
23 contact anybody with regard to the application you're making
24 now? Did you contact Janet Snyder?

25 MR. JACKSON: No, your Honor. We did not contact

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1 Ms. Snyder. Again, like we had tried to --

2 THE COURT: Limit yourself to what you did. And if it
3 is someone else who did the doing, please identify them by
4 name. I don't want to have an unclear record here,
5 Mr. Jackson.

6 MR. JACKSON: Well, I can't speak with respect to
7 Ms. Snyder, your Honor. The intention initially was to notify
8 the parties to indicate that we will be filing the matter in
9 White Plains on this Friday, and that we would then proceed to
10 serve the papers personally on the individual parties. And
11 then we would proceed at that point with the argument on the
12 matter as per the court's directive in the order to show cause.

13 THE COURT: I appreciate your statement about intent.
14 But my inquiry is not about what your intent was, but what your
15 actions were. And as far as you know, Ms. Snyder has not been
16 contacted.

17 MR. JACKSON: As far as I know, Ms. Snyder has not
18 been contacted.

19 THE COURT: All right. Now --

20 MR. CORWIN: Your Honor, if I may, just with respect
21 to the United States. First, I want to make clear it's not
22 totally clear to me that the United States has been served
23 pursuant to Rule 4(i). I know that my office has received a
24 copy of the complaint. I don't know if the attorney general
25 has been served.

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1 As far as notice of this order to show cause
2 proceeding, as far as I know, Mr. Jackson first called our
3 office at 4:20 this afternoon, asked for who was assigned to
4 the case. And that was the first I am aware that he called our
5 office about this case. Nor is there any indication we've been
6 served with the order to show cause papers, although I was able
7 to obtain a copy from your Honor's court.

8 MR. JACKSON: I know that he had not been served with
9 any of the papers, your Honor. There was no service of the
10 actual order to show cause on the U.S. attorney's office.

11 THE COURT: Why was that?

12 MR. JACKSON: There was again, the plaintiff wants --
13 the plan was to file the papers in federal court, get the
14 return date, the return information from the service
15 information, and then file the formal papers on the -- then
16 file the papers. That's pursuant to the court's directive on
17 the various defendants. That was pretty much the plan.

18 THE COURT: In other words, not to present the
19 proposed order to show cause to the parties against whom you
20 are seeking to the temporary relief?

21 MR. JACKSON: Well, we -- what I was told prior to
22 filing the paper, we contacted Judge Brieant's chambers to
23 inform them of our intention to file the order to show cause
24 today. And the courtroom -- the deputy or the judge's law
25 clerk indicated to me that the papers would have to first be

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1 filed before service through the clerk's office, and then be
2 reviewed, and at that point they would go upstairs and the
3 judge would indicate with service information. That's pretty
4 much what I followed the directions of Judge Brieant's law
5 clerk.

6 THE COURT: You're not suggesting that someone in
7 Judge Brieant's chambers told you that you are prohibited from
8 transmitting a copy of your proposed order to show cause?

9 MR. JACKSON: No, of course not, Judge. I am not
10 suggesting that at all.

11 THE COURT: Okay. All right.

12 MR. JACKSON: Not at all, Judge.

13 THE COURT: Who are you seeking relief against?

14 MR. JACKSON: Well, we are seeking relief primarily
15 against the various defendants that are indicated in the
16 complaint.

17 THE COURT: Well, what relief are you seeking against
18 the Federal Bureau of Investigation on this TRO application?

19 MR. JACKSON: Well, to the extent that -- well,
20 frankly, the TRO addresses physically the inauguration and the
21 implementation of the mayor elect into office, and that
22 specifically relates to the actions of the U.S. Attorney's
23 Office, the FBI --

24 THE COURT: I've read your complaint. I am trying to
25 figure out who you are seeking a temporary restraining order

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1 against. Who is to be enjoined?

2 MR. JACKSON: It would be the board of elections, your
3 Honor. Board of elections.

4 THE COURT: Well, there are two defendants in this
5 action that have "board of elections" in their names.

6 MR. JACKSON: Westchester County Board of Elections
7 and District of New York State Board of Elections. The
8 Westchester Board of Elections, as far as I know, would be the
9 ones responsible, entrusted to file with certification and
10 implementation with the election results of the November 6
11 general election.

12 THE COURT: What role does the board of elections have
13 in the inauguration of the mayor?

14 MR. JACKSON: Excuse me? What role does the board of
15 elections have, your Honor? Well, they certify the results of
16 the general elections, and pretty much sign off on that. And
17 the proposed winners of the -- or the purported winners of the
18 general elections are then sworn in.

19 THE COURT: Have they certified the results?

20 MR. JACKSON: As far as I know, yeah. As far as I
21 know.

22 THE COURT: All right. So the results have already
23 been certified by the board.

24 MR. JACKSON: The results have already been certified.

25 THE COURT: Right.

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1 MR. JACKSON: Right now we are seeking --

2 THE COURT: So what does the board of elections do
3 after election results are certified with regard to an
4 inauguration?

5 MR. JACKSON: Well, as far as I know, their role would
6 then be to conduct the formal inauguration. And to again,
7 that's pretty much to follow through with the results of the
8 general election.

9 THE COURT: Do you have any evidence to show that the
10 board of elections has a role in the inauguration of a mayor
11 after certifying results?

12 MR. JACKSON: Well, not that they have a role, but
13 they have a role in the scheduling and the certifying of those
14 results that would result in an inauguration.

15 THE COURT: But the results you tell me have already
16 been certified. When were they certified?

17 MR. JACKSON: As far as I know, they should have been
18 certified I believe -- hold on. I believe, your Honor, again,
19 it's within 30 days after the election itself. But I'm not
20 certain about that.

21 THE COURT: All right.

22 MR. JACKSON: I don't have the certification date. I
23 am pretty certain the results were certified by the board.

24 THE COURT: All right. As I understand this, your
25 application is based on actions that you allege were taken by

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1 certain of the defendants on October 11 of this year. Is that
2 correct?

3 MR. JACKSON: That's right, your Honor.

4 THE COURT: All right. And thereafter there was an
5 election on November 6, 2007, correct?

6 MR. JACKSON: Correct.

7 THE COURT: Right. Then you filed an action on
8 November 8, 2007, in front of Judge Brieant.

9 MR. JACKSON: That's correct.

10 THE COURT: All right. And you presented your order
11 to show cause application, at least I was contacted on it, at
12 approximately 3:23 p.m. on the last business day before the
13 inauguration.

14 MR. JACKSON: That is an accurate assessment.

15 THE COURT: All right. Let me hear your application.

16 MR. JACKSON: Well, Judge, again, the application
17 relates to actions committed by the various defendants in this
18 matter. We allege that the U.S. Attorney's Office, the Federal
19 Bureau of Investigation, and the United States Department of
20 Justice violated their own policy in scheduling an
21 investigation and raid of an African American incumbent mayor's
22 office shortly preceding an election.

23 Clearly the U.S. Attorney's manual, in addition to
24 other documentation, establishes the policy that no
25 investigation or prosecution or certainly a raid can take place

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1 before an election because it would have the effect of
2 intimidating and ultimately affecting the outcome of political
3 races.

4 One of the concerns that we had in this case,
5 particularly in light of the Mayor Davis' primary results -- he
6 ran in the primary as a Democratic candidate and he lost the
7 primary to Mr. Young. However, shortly thereafter that, he
8 declared his candidacy under two other party lines, the
9 Conservative Party and the Independence Party, and he was told
10 shortly after that, that that would result in an investigation.
11 And shortly thereafter, the raid occurred.

12 Now, we submitted with the order to show cause
13 documentation supporting the existence of the policy I just
14 spoke about, in addition to which a press release that was
15 issued by the U.S. Attorney's Office back in May of 2006
16 wherein they indicated that they would investigate and
17 prosecute -- look into, investigate and prosecute certain
18 public officials in this area, one of which was Mayor Davis.

19 The importance of that suggests, your Honor, two
20 things. One, it suggests that Mayor Davis was in fact unfairly
21 and selectively targeted for an investigation and ultimate
22 prosecution, which hasn't occurred yet. And secondly, and more
23 importantly, it shows that the U.S. Attorney, the FBI, and
24 Justice Department had ample time prior to the November 6
25 election, indeed prior to the September '07 primary, to conduct

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1 such investigation, ultimately to schedule a raid if they saw
2 fit. So it seems as if that --

3 THE COURT: Do you know whether they had the
4 information that gave rise to the warrant -- do you know when
5 they got that information?

6 MR. JACKSON: Well, we do know that they had
7 information as early as, again, May of '06.

8 THE COURT: They issued the press release in May of
9 '06. But in the course of investigations, one often finds that
10 new information arises.

11 MR. JACKSON: Well, I would submit, your Honor, that
12 even -- again, I am not aware of any evidence that they had in
13 their possession that warranted the raid be conducted at the
14 time that it was.

15 I submit, Judge, that there were no exigent or
16 emergency circumstances as far as I know that justifies --
17 justified the timing of the raid. The timing of the raid
18 suggests a political motivation with respect -- or at least
19 some intention on the part of the defendants to intimidate and
20 adversely affect voter participation.

21 Again, their very policy expressly indicates the
22 reasons for not bringing about investigations in close
23 proximity to elections. And here, clearly, one could argue
24 that there was an effort made to do just that. To cause the
25 suppression of voter turnout, and to cause the proposed or

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1 prospective supporters of Mayor Davis to become intimidated and
2 thus affected their turnout.

3 THE COURT: All right. Anything else, Mr. Jackson?

4 MR. JACKSON: Well, Judge, I think that's pretty much
5 the essence of the complaint I filed with the district court,
6 and the request for the injunction is predicated on what we
7 believe are actions by the U.S. Attorneys that violated the
8 Voters Act as well as Section 1983. We think that it -- the
9 fact that their actions violated their own policy, their own
10 expressed policy, and with the understanding that such actions
11 would in fact result in a suppression and intimidation of voter
12 participation, that through discovery and would leave that
13 other evidence would -- could be developed to substantiate the
14 other claims in the case.

15 But clearly, your Honor, the actions conducted here by
16 the U.S. Attorney's Office, the FBI, and the Justice Department
17 caused again the suppression of the vote. And the suppression
18 of the vote related to predominantly African American voters,
19 who either stayed away from the polls or didn't support Mayor
20 Davis because of the misinformation that was disseminated
21 relating to the raid.

22 And your Honor, this was a raid that was conducted
23 under the scrutiny of the media, it was highly publicized,
24 there were allegations thrown back and forth between not only
25 in the print media but also in the electronic media with

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1 regards to Mayor Davis actually being arrested as a result of
2 the raid and having to walk around with an ankle bracelet, all
3 of which was not true. And we had information that these
4 comments were made by various people who were associated with
5 some of the defendants -- some of the defendants in this case.
6 And it certainly suggests again this was an effort made to
7 adversely affect voter participation and voter turnout who
8 support an African American incumbent mayor.

9 THE COURT: Thank you. Mr. Corwin.

10 MR. CORWIN: Just as a caveat, this is something I've
11 spent about an hour thinking about. That being said, I first
12 want to say that for purposes of this hearing I guess we assume
13 the truth of some of the allegations in the complaint, although
14 I believe they will prove to be entirely baseless.

15 That being said, nothing Mr. Jackson said has
16 identified any statutory or constitutional basis for the relief
17 he seeks. As your Honor I think has correctly noted, the
18 parties against whom he seeks the TRO are not here. I don't
19 know who the proper parties would be. I certainly would assume
20 that sometime between the date of the election, certainly after
21 the filing of the complaint, there were avenues that
22 Mr. Jackson and the plaintiffs in particular could have pursued
23 to challenge the rules of the election however they deemed fit.

24 To bring this order to show cause on literally the
25 last day that was possible, less than a week before the

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1 inauguration, without any service on the parties, is unfair to
2 the parties. And I guess more importantly, I don't think even
3 accepting the truth of all his allegations he's established the
4 basis for the relief he seeks.

5 THE COURT: Thank you, Mr. Corwin. Mr. Jackson,
6 anything you want to say in reply?

7 MR. JACKSON: Yes, sure, Judge. The Voting Rights Act
8 of 1965 certainly provides for injunctive relief for
9 preliminary injunction if it can be shown that there was in
10 fact a violation of the Voting Rights Act of 1965, and show
11 certain other requirements. Voting is a fundamental right, and
12 it is established as such. It is a showing of irreparable
13 harm.

14 I gave the layout, the basis for the District Court to
15 in fact issue a preliminary injunction in circumstances that
16 relate of the right of franchise. In addition to that, 42
17 U.S.C. Section 1983 also provides the District Court with the
18 authority to issue a preliminary injunction if it is warranted
19 under circumstances set forth in the application.

20 And, your Honor, I believe that the allegations set
21 forth in plaintiffs' instant application sufficiently
22 demonstrates that the application should be granted. I believe
23 that particularly in light of the fact that the defendants
24 cannot negate the plain factual contents in the complaint, that
25 plaintiffs are substantially likely to succeed on the merits of

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1 the claims under both the Voting Rights Act in addition to 42
2 U.S.C. Section 1983.

3 MR. CORWIN: Your Honor, if I might --

4 THE COURT: Pause. Stop. Go ahead, Mr. Jackson.

5 MR. CORWIN: I apologize.

6 MR. JACKSON: I'm sorry.

7 THE COURT: No. Anything else, Mr. Jackson?

8 MR. JACKSON: That is it, your Honor. I believe again
9 that we did demonstrate in the papers, some of the reporting
10 exhibits demonstrate that the plaintiffs will in fact suffer
11 irreparable harm and that there is, again, there is the
12 evidence is focused upon there is a substantial likelihood of
13 success on the merits. The defendants are not going to be able
14 and I don't anticipate them in any way refuting the basic
15 factual contentions that we believe serve as the basis for the
16 claims in the complaint. And in that vein, I think that the
17 instant application, your Honor, should be granted.

18 THE COURT: All right. Thank you, Mr. Jackson, and
19 thank you, Mr. Corwin. The Court is now ready to rule.

20 This is an action invoking federal question
21 jurisdiction under Section 1331 of Title 28, and specifically
22 the plaintiffs assert rights under the Voting Rights Act of
23 1964, Sections 1983, 1985, 1988 of Title 42, the First, Fourth,
24 Fifth and 14th Amendments to the United States Constitution.

25 There are certain defendants who can be characterized

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1 as the federal defendants, including the Department of Justice,
2 the Federal Bureau of Investigation, the U.S. Attorney's
3 Office, and certain John Doe agents. There are also certain
4 state defendants in this action, specifically the New York
5 State Board of Elections and the Westchester County Board of
6 Elections.

7 The plaintiff asserts that on or about October 11,
8 agents for the FBI were conducting an investigation into
9 alleged improprieties in trash hauling contracts with the city
10 of Mount Vernon, and that the FBI agents conducted a raid of
11 the mayor of Mount Vernon, Ernest Davis' City Hall offices.
12 The plaintiffs allege that this was done three weeks before the
13 November 6 election in which Mr. Young was a candidate for
14 mayor and Mr. Davis was a candidate for mayor. And it is
15 alleged that this was done with the purpose of suppressing the
16 African American vote and causing Mr. Davis to lose the
17 election.

18 The election did in fact take place on November 6.
19 And there appears to be no dispute that candidate Clinton Young
20 prevailed in the election and was subsequently certified as the
21 winner of the election by one of the two defendant boards of
22 elections which are arms of the state or of the County of
23 Westchester.

24 The action before me at the moment as Part I judge was
25 filed on November 8, 2007, a mere two days after the conduct of

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1 the general election. In argument this afternoon, plaintiffs'
2 counsel expresses the belief that certification of the election
3 results would've taken place approximately 30 days after the
4 election, which would have put it into early December. A
5 little bit shy of a month after this lawsuit was commenced.

6 There is no indication in the record before me that
7 the plaintiffs sought to enjoin the certification of the
8 election results.

9 At this stage, at now 5:25, on December 28, the last
10 business day before the Tuesday, January 1, 2008, scheduled
11 inauguration of Mr. Young as mayor of the city of Mount Vernon,
12 the plaintiffs seek a temporary restraining order against that
13 inauguration.

14 Having reviewed the record, I find that the plaintiffs
15 have not at this stage demonstrated a probability of success on
16 the merits, or a likelihood of irreparable injury, nor have
17 they shown any kind of balance of their hardships tipping
18 decidedly in their favor or other grounds for injunctive
19 relief.

20 It appears to this Court that the plaintiffs sat on
21 their rights, to the extent they had any rights, took no action
22 before the results were certified, and now there is no showing
23 that the board of elections or any defendant in this action has
24 any role whatsoever in the ministerial act of the
25 administration of oath. The plaintiff has made no showing of

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1 what would happen if there were no inauguration. Certainly the
2 term of office of Mr. Davis would in all events have expired.

3 There is a substantial public interest factor which
4 weighs into my denial of a temporary restraining order. The
5 citizens and voters of the city of Mount Vernon went to the
6 polls on November 6, they cast their ballots, and the results
7 of the election has taken place. I cannot and will not lightly
8 disregard the results of that election, particularly in the
9 absence of any challenge, timely challenge to the certification
10 of the results of that election.

11 So, accordingly, I find no basis to grant the
12 temporary restraining order. What I am doing is I am signing
13 the order to show cause and making it returnable before Judge
14 Brieant on January 18, 2008, at 10 a.m. or such other time as
15 Judge Brieant can conveniently hear it. It may be that there
16 will be no point to the application after the inauguration
17 takes place. It may well be moot. But I can comfortably say
18 that there is no basis for my granting a temporary restraining
19 order.

20 I'm further directing that this order to show cause
21 and the exhibits on which it is based together with the copy of
22 the transcript of this proceeding, which is available for
23 purchase through the office of the court reporters of the
24 Southern District of New York, are to be served on the
25 defendants in this action.

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1 So, as Part I judge, I have signed the order to show
2 cause without a temporary restraining order thereby permitting
3 the inauguration of the certified winner of the election to go
4 forward as scheduled. We are adjourned. Thank you all.

5 MR. CORWIN: Thank you, your Honor.

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